

A Resolution to Approve a Memorandum of Understanding (MOU) between Fairfield County and the Ohio Department of Agriculture (ODA) to Efficiently Resolve Situations Where an Existing Right-of-Way or Easements may Need to be Expanded for Public Safety Purposes in Permanent Agricultural Easements

WHEREAS, ODA is authorized to acquire real property used predominately in agriculture and agricultural easements pursuant to Ohio Revised Code ("ORC") § 901.21;

WHEREAS, land encumbered by an agricultural easement pursuant to ORC § 5301.67 is often also encumbered by right-of-way easements held by various governmental entities;

WHEREAS, ODA acknowledges that public safety concerns may periodically require that these right-of-way easements held by various governmental entities be expanded; and

WHEREAS, ODA acknowledges that various governmental entities may be entitled to pursue a cause of action for eminent domain to expand these right-of-way easements;

WHEREAS, Fairfield County provided ODA with safety documentation for easements needed.

NOW THEREFORE, BE IT RESOLVED BY THE BOARD OF COUNTY COMMISSIONERS, COUNTY OF FAIRFIELD, STATE OF OHIO:

Section 1. ODA and Fairfield County agree to enter this MOU to efficiently resolve situations where an existing right-of-way easement may need to be expanded for public safety purposes.

MEMORANDUM OF UNDERSTANDING

BETWEEN

FAIRFIELD COUNTY

AND

THE OHIO DEPARTMENT OF AGRICULTURE

This Memorandum of Understanding ("MOU") is entered into by the State of Ohio, acting by and through the Ohio Department of Agriculture (hereinafter "ODA"), 8995 East Main Street, Reynoldsburg, Ohio 43068-3399 and the County of Fairfield, Ohio (hereinafter "Fairfield County"), 210 E Main St, Lancaster, Ohio 43130 (collectively referred to as the "Parties"). Both Parties agree as follows:

RECITALS

WHEREAS, ODA is authorized to acquire real property used predominately in agriculture and agricultural easements pursuant to Ohio Revised Code ("ORC") § 901.21;

WHEREAS, land encumbered by an agricultural easement pursuant to ORC § 5301.67 is often also encumbered by right-of-way easements held by various governmental entities;

WHEREAS, ODA acknowledges that public safety concerns may periodically require that these right-of-way easements held by various governmental entities be expanded; and

WHEREAS, ODA acknowledges that various governmental entities may be entitled to pursue a cause of action for eminent domain to expand these right-of-way easements;

NOW THEREFORE, ODA and Fairfield County agree to enter into this MOU to efficiently resolve situations where an existing right-of-way easement may need to be expanded for public safety purposes.

Article I - Authority

Pursuant to O.R.C. § 901.051, ODA has the authority to enter into cooperative agreements with any subdivision of the state. Specifically, ODA and Fairfield County enter into this MOU to establish a working relationship that allows all parties to meet their responsibilities under O.R.C. Chapter 901, et seq. and associated rules, as well as meet the requirements for future improvements. The Parties mutually acknowledge and agree that (1) certain properties subject to farmland preservation or conservation easements are or may be encumbered by easements or rights-of-way held by governmental or public utility entities; (2) the public health, safety, and welfare may

periodically require the expansion of these easements or rights-of-way; and (3) such entities may be entitled to pursue a cause of action for eminent domain to secure or expand these rights. Fairfield County acknowledges that this MOU does not provide any required consent in any project which may be needed from the landowner, a local sponsor as defined in Ohio Administrative Code ("OAC") § 901-2-01(W), or from the United States Department of Agriculture, Natural Resources Conservation Service ("NRCS").

Article II - ODA Responsibilities

Notwithstanding any other provision of the deed of agricultural easement in question, ODA will permit Fairfield County to expand easements or rights-of-way along or across the subject properties for the purposes of roads, bridges, electric, water, sanitary sewer, storm sewer or gas lines, or similar public infrastructure involving transportation for public use or utilities (hereinafter "Project"). Any such Project must benefit the landowner's property, as defined in any Deed of Agricultural Easement as held by the ODA. ODA shall hereby consent to such Project so long as at least one or more of the following conditions are met:

1. Project does not require any change to the existing right-of-way easement;
2. In any Project for bridge, culvert or storm sewer replacement, repair or reconstruction, the easement expansion to accommodate culvert or storm sewer ends, bridge piers, wing walls, or approach work is less than one (1) acre of the subject property;
3. In any Project for road widening, the easement expansion does not expand the total width of the right-of-way easement, as it existed at the time that the Deed of Agricultural Easement was executed, beyond sixty (60) feet from the relevant center line; It is preferred the expanded right-of-way maybe used for utility services across the property.
4. In any Project for intersection improvements, the easement expansion is less than one (1) acre of the subject property.
5. In any Project for public utility installations, the easement expansion does not expand the total width of the right-of-way easement, as it existed at the time that the Deed of Agricultural Easement was executed, beyond ninety (90) feet from the relevant center line; It is preferred to use the right-of-way for utility services across the property even if a temporary easement is needed for construction or
6. Any Project that requires a temporary expansion of an existing right-of-way or easement or use of a new right-of-way or easement so long as any undeveloped land being so used is returned to land of equal or greater agricultural productive capability following completion of the project.

ODA further agrees to execute any instrument necessary to expand any existing right of way or easement pursuant to this MOU. All other projects involving the use of land that exceeds the criteria of this MOU will be referred to ODA for consent as required pursuant to the terms any Deed of Easement. The foregoing notwithstanding, the ODA shall not be required to consent to any Project affecting any landowner's property encumbered by a Deed of Agricultural Easement when such consent is prohibited by the terms of the Deed of Agricultural Easement, or where the United States of America, acting by and through the United States Department of Agriculture, Natural Resources Conservation Service is a party to the Deed of Agricultural Easement.

Article III - Fairfield County Responsibilities

Fairfield County agrees to:

1. Negotiate in good faith with the current landowner of any property encumbered by an agricultural easement and whose consent is required to expand the relevant existing right-of-way easement; and
2. Provide ODA notice, plans, and explanation of the public safety issue(s) that the proposed right- of-way easement expansion would address in writing at least sixty (60) days prior to construction.

Article IV - Responsibilities of the Parties

Each Party assumes responsibility and liability for the acts and omissions of their respective employees and contractors. Each Party assumes sole and separate responsibility for any costs, losses, judgments, equipment, attorney fees or other liability arising from the acts and omissions of their respective employees and contractors under this MOU.

Article V - Compliance with Law

The Parties agree to comply with all applicable federal, state and local laws in the conduct of the work hereunder, including but not limited to O.R.C. § 125.111. In the event that any provision of this MOU conflicts with any law, rule or regulation, said law, rule or regulation shall prevail.

Article VI - Public Records: Recording

Fairfield County acknowledges that this MOU and other records in the possession or control of Fairfield County regarding this MOU are public records under Ohio Revised Code § 149.43 and are open to public inspection unless a legal exemption applies. The Parties agree that this MOU may be recorded in the appropriate records of the Fairfield County Recorder and that Fairfield County shall bear the expense of recording, if any.

Article VII - Designated Contacts

Any notices, bills, invoices, or reports required by this MOU shall be in writing and sent by the Parties via United States mail, postage paid to the address below:

Ohio Department of Agriculture
Division of Soil & Water Conservation
Attention: Office of Farmland Preservation
8995 E. Main Street
Reynoldsburg, Ohio 43068

Fairfield County Board of Commissioners
210 E Main St
Lancaster, Ohio 43130

Article VIII - Excuse of Performance

The performance of this MOU may be suspended by either Party for cause or causes beyond the reasonable control of such Party. Such causes shall include, but are not limited to, acts of God, acts of war, riot, fire, explosion, accident, flood or sabotage; unforeseeable or unpreventable lack of adequate fuel, power, raw materials, labor or transportation facilities; unforeseeable changes in governmental laws, regulations, requirements, orders or actions; unforeseeable or preventable breakage or failure of machinery or apparatus; national defense requirements; injunctions or restraining orders; unforeseeable or unpreventable labor trouble, strike, lockout or injunction, provided that neither Party shall be required to settle or prevent a labor dispute against its own best judgment.

Article IX - Entire Agreement

This written MOU constitutes the entire agreement between Parties, and there are no other agreements between them, either oral or written, which relate to the work to be performed under this MOU.

Article X - Construction, Applicable Law and Headings

1. This MOU and any claims arising in any way out of this MOU shall be governed by the laws of the State of Ohio. Any provision of this MOU prohibited by the law of Ohio shall be deemed void *ab initio*.
2. Any provision of this MOU found to be prohibited by law shall be ineffective to the extent of such prohibition without invalidating the remainder of the MOU.
3. The headings used in this MOU are for convenience only and shall not be used in interpreting this MOU.

Article XI - Assignment:

Neither this MOU nor any rights, duties, or obligations described herein shall be assigned by either Party to this MOU without the prior express written consent of the other Party.

Article XII - Counterparts

Electronic Signatures Copies of signatures sent by facsimile transmission or provided electronically in portable document format ("PDF") shall be deemed to be originals for purposes of execution and proof of this Agreement.

Article XIII - Termination


1. Either Party may terminate this MOU, in whole or in part, at any time and for any reason by giving thirty (30) calendar days written termination notice to the other Party.
2. Except in the case of delay or failure resulting from circumstances beyond the control and without the fault of negligence of either Party, either Party shall be entitled, by written or oral notice, to cancel this Agreement in its entirety or in part, for breach of any of the terms, and to have all other rights against the other Party by reasons of that Party's breach as provided by law. A breach shall mean, but shall not be restricted to, any one or more of the following events:
 - a. Either Party fails to perform the services by the date required or by such later date as may be agreed to in a written amendment to the MOU, signed by both Parties;
 - b. Either Party breaches any warranty or fails to perform or comply with any terms of this MOU.

[THIS PORTION INTENTIONALLY LEFT BLANK.]

IN WITNESS WHEREOF, ODA, through its legally appointed Director and Fairfield County, through its authorized representative, have caused this Memorandum of Understanding to be executed on the dates set forth below.

For Fairfield County

By:


Dave Levacy, President
Fairfield County Board of Commissioners

Date: April 16, 2024

State of Ohio
Ohio Department of Agriculture

By:


Brian Baldrige, Director

Date: 4/15/24

Prosecutor's Approval Page

Resolution No.

A Resolution to Approve a Memorandum of Understanding (MOU) between Fairfield County and the Ohio Department of Agriculture (ODA) to Efficiently Resolve Situations Where an Existing Right-of-Way or Easements may Need to be Expanded for Public Safety Purposes in Permanent Agricultural Easements

(Fairfield County Commissioners)

Approved as to form on 4/11/2024 4:44:00 PM by Amy Brown-Thompson,



Amy Brown-Thompson
Prosecutor's Office
Fairfield County, Ohio

Signature Page

Resolution No. 2024-04.16.b

A Resolution to Approve a Memorandum of Understanding (MOU) between Fairfield County and the Ohio Department of Agriculture (ODA) to Efficiently Resolve Situations Where an Existing Right-of-Way or Easements may Need to be Expanded for Public Safety Purposes in Permanent Agricultural Easements

(Fairfield County Commissioners)

Upon the motion of Commissioner Jeffrey M. Fix, seconded by Commissioner Steven A. Davis, this resolution has been Adopted:

Voting:

David L. Levacy, President	Aye
Jeffrey M. Fix, Vice President	Aye
Steven A. Davis	Aye

Board of County Commissioners
Fairfield County, Ohio

CERTIFICATE OF CLERK

It is hereby certified that the foregoing is a true and correct transcript of a resolution acted upon by the Board of County Commissioners, Fairfield County, Ohio on the date noted above.



Rochelle Menningen
Board of County Commissioners
Fairfield County, Ohio